

**July 18, 2006**

SUBJECT: Adoption of Resolution to Authorize the Director of Human Resources to Receive Criminal History Information for Prospective Employees/Volunteers.

REPORT IN BRIEF

This report recommends that the City Council adopt the necessary resolution to specifically authorize the Director of Human Resources, or designee, to access State, and where applicable, local and Federal summary criminal history information for all prospective employees, volunteers, and independent contractors for employment/placement purposes.

BACKGROUND

California Penal Code Section 11105 allows cities, when access is specifically authorized by the City Council, to access State summary criminal history information from the Department of Justice and information from the Federal Bureau of Investigation, for the purpose of screening prospective employees, volunteers, and independent contractors. California Penal Code Section 13300 allows cities, when authorized in the same manner, to access local summary criminal history information for the same purpose. There has been selected criminal history checks of prospective employees in the past and a check of past records does not indicate the required City Council action has been formally adopted. Beginning with the new fiscal year all prospective employees will be fingerprinted prior to beginning employment. Volunteers and independent contractors working with minors will also be fingerprinted prior to the start of City service.

EXISTING POLICY

The General Plan, Planning and Management Element, Sub-element 7.3 Legislative Management, Goal 7.3D: Maintain a quality workforce, consistent with laws, the Charter, and adopted policies in order to assure that City services are provided in an effective manner. Policy 7.3D.1: Maintain a recruitment and selection process that ensures a highly competent workforce. Action State 7.3D.1C states: Assure that the selection process complies with legal requirements.

DISCUSSION

In order to ensure that the interests of the City, its employees, and members of the public are protected, and to help minimize potential liability, it is

recommended that the Director of Human Resources, or designee, be authorized to access State, and, where applicable, local and Federal summary criminal history information on all prospective employees, volunteers, and independent contractors for employment/placement purposes. In addition, the City will receive subsequent arrest notification for previously fingerprinted employees, volunteers, and independent contractors during the period of employment or service with the City.

Section 5164 of the California Public Resources Code requires that the City not hire a person for employment, or place a volunteer to perform services, at a City operated park, playground, recreation center, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in that Code section. As provided by law, the City is currently accessing summary criminal history information for this category of prospective employees, volunteers, and independent contractors, and is in compliance with this Code.

FISCAL IMPACT

The estimated annual cost to fingerprint new employees has been included in the Fiscal Year 2006/2007 base budget for Program 755 – Recruitment and Selection, and in the budget for the Department of Public Safety for new departmental employees, volunteers, and independent contractors. The cost to fingerprint volunteers will be paid by the department in which the volunteer is placed. The current budget for the Parks and Recreation Department includes funding for the fingerprinting of volunteers as required by the Public Resources Code. If a decision is made to expand the fingerprinting of volunteers beyond the statutory requirements, there will be a modest fiscal impact that may result in the need for a future budget modification.

CONCLUSION

Council authorization to allow the Director of Human Resources, or designee, to access summary criminal history information on all prospective employees, volunteers, and independent contractors will provide the City with an additional screening tool for employment/placement purposes.

PUBLIC CONTACT

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library and the City Clerk's Office.

ALTERNATIVES

1. Adopt the Resolution authorizing the Director of Human Resources, or designee, to access summary criminal history information for

employment/placement purposes for all prospective employees, volunteers, and independent contractors.

2. Do not adopt the Resolution authorizing the Director of Human Resources, or designee, to access summary criminal history information for employment/placement purposes for all prospective employees, volunteers, and independent contractors.

RECOMMENDATION

Staff recommends adoption of Alternative #1: Adopt the Resolution authorizing the Director of Human Resources, or designee, to access summary criminal history information for employment/placement purposes for all prospective employees, volunteers, and independent contractors.

Reviewed by:

Erwin Young, Director, Human Resources

Prepared by: Tammy Parkhurst, Senior Management Analyst

Approved by:

Amy Chan
City Manager

Attachment

A. Resolution

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE AUTHORIZING ACCESS TO CRIMINAL
HISTORY INFORMATION FOR PROSPECTIVE EMPLOYEES,
INDEPENDENT CONTRACTORS AND VOLUNTEERS**

WHEREAS, Penal Code Sections 11105(b)(10) and 13300(b)(10) allow a city, if specifically authorized by the City Council, to access local, state, and federal summary criminal history information for the purpose of employment, licensing, and certification; and

WHEREAS, Public Resources Code Section 5164 requires that cities conduct criminal background screening on employees and volunteers who have supervisory or disciplinary authority over minors at any park, playground, or recreation center; and

WHEREAS, Education Code Section 10911.5 requires that cities conduct criminal background screening on employees who have direct contact with minors in connection with any public recreation program; and

WHEREAS, sound personnel practices encourage the appropriate investigation, including criminal background screening, of all candidates for City employment and volunteers; and

WHEREAS, the City should not hire as an employee, or retain as a volunteer, any person who has a record of conviction, or arrest pending adjudication, of any crime specified in California Penal Code 11105.3, California Public Resources Code 5164, or any other crime of moral turpitude; and

WHEREAS, the City should also have the ability to conduct similar criminal background screening of independent contractors whose services to the City will involve contact with minors or other vulnerable persons, access to City property or funds, or other services to the City where such screening would be prudent; and

WHEREAS, this Resolution is intended to affect employees, volunteers, and independent contractors in departments other than the Department of Public Safety, which conducts criminal background checks pursuant to state laws and regulations governing peace officers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE
HEREBY RESOLVES AS FOLLOWS:

Section 1. The Director of Human Resources or his or her designee is hereby authorized to access criminal history information, via fingerprinting, of prospective employees, volunteers, and independent contractors, pursuant to policies which the Director of Human Resources shall adopt.

Section 2. This resolution shall become effective immediately upon its passage and adoption.

Adopted by the City Council at a regular meeting held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney